

**WAUKESHA COUNTY BOARD OF ADJUSTMENT
SUMMARY OF MEETING**

The following is a Summary of the Board of Adjustment Meeting held on Wednesday, March 10, 2010, at 6:30 p.m. in Room AC 255/259 of the Waukesha County Administration Center, 515 W. Moreland Blvd., Waukesha County, Wisconsin, 53188.

BOARD MEMBERS PRESENT: Robert Bartholomew
Tom Day
Rob Schuett
Linda Weber

BOARD MEMBERS ABSENT: Walter Schmidt
Ray Dwyer
Nancy Bonniwell

SECRETARY TO THE BOARD: Tom Day

OTHERS PRESENT: Sheri Lieffring, Senior Land Use Specialist
Mike Schober, BA10:006, agent
Brad Lynch, BA10:005, agent
Dave Wick, BA10:005, owner
Jim & Deb Koudulka, BA10:003, neighbors
Chuck Vecitis, BA10:006, owner
Tim Knepprath, BA10:003, owner
Nick Collon, BA10:006, bank (interested party)
Bill Groskopf, BA10:004, agent
John (Jack) Grimm, BA10:005, neighbor

The following is a record of the motions and decisions made by the Board of Adjustment. Detailed minutes of these proceedings are not produced, however, a taped record of the meeting is kept on file in the office of the Waukesha County Department of Parks and Land Use and a taped copy is available, at cost, upon request.

SUMMARIES OF PREVIOUS MEETINGS:

Mr. Day *I make a motion to approve the Summary of the Meeting of February 10, 2010.*

The motion was seconded by Mr. Schuett and carried 3-0. Ms. Weber abstained as she was not present at the February 10, 2010 meeting.

NEW BUSINESS:

BA10:002 SHAWN AND SUE M. IRISH (OWNERS) KEVIN CONSTRUCTION (AGENT):

Mr. Day *I make a motion to **approve** the request, in accordance with the Staff's recommendation, as stated in the Staff Report, with the conditions in the Staff Report, and for the reasons stated in the Staff Report.*

The motion was seconded by Mr. Schuett and carried unanimously.

The Planning and Zoning Division staff's recommendation was for **approval** of the requested variances from the offset between principal and accessory structures and remodeling a non-conforming structure in excess of 50% of its fair market value requirements of the Waukesha County Shoreland and Floodland Protection Ordinance, to permit the construction of a front porch addition, second story addition, and interior remodeling to the existing residence subject to the following conditions.

1. The proposed addition must be located at least 7 ft. from the existing detached garage as measured to the outer edges of the walls, provided the overhangs do not exceed two (2) ft. in width. If the overhangs exceed two (2) ft. in width, the building must be located so that the outer edges of the overhangs conform to this offset requirement.
2. A firewall in conformance with the building code requirements must be installed on both floors of the east side of the residence. The plans must be certified by the Town Building Inspector prior to issuance of a Zoning Permit.
3. Prior to the issuance of a Zoning Permit, a detailed time and materials cost estimate of the construction must be submitted to Planning and Zoning Division Staff.
4. Prior to the issuance of a Zoning Permit, two (2) complete sets of building plans for the proposed addition, in conformance with all conditions must be submitted to the Planning and Zoning Division staff for review and approval.
5. Prior to the issuance of a Zoning Permit, five (5) copies of an updated Plat of Survey showing all existing structures and the staked-out location of the cantilevered portion of the addition, in conformance with all conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The approval of this request, with the recommended conditions, will allow a reasonable use of the property that is not unnecessarily burdensome. The residence is conforming except that it is a few inches too close to the existing detached garage. It would be unreasonable and unnecessarily burdensome to require that the garage be removed to make the residence conforming. The 50% and offset variances, as recommended, will not have an adverse impact on any adjacent property or to the public in general as the additions will meet all locational requirements of the Ordinance (except offset to the owner's detached garage). The property will still be significantly below the maximum floor area ratio requirement and has over twice the required open space. As recommended, the proposal provides a reasonable use of the property that is not unnecessarily burdensome and will permit additions and remodeling to the residence that is not detrimental to the surrounding neighborhood or contrary to the public interest. Therefore, the approval of this request, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance.

BA10:003 TKO DEVELOPMENT, LLC:

Mr. Day

*I make a motion to **approve** the request, in accordance with the Staff's recommendation, as stated in the Staff Report, with the conditions in the Staff Report, and for the reasons stated in the Staff Report.*

The motion was seconded by Ms. Weber and carried unanimously.

The Planning and Zoning Division staff's recommendation was for **approval** of the requested variances from the road setback, floor area ratio, and open space requirements of the Waukesha County Shoreland and Floodland Protection Ordinance to permit the construction of a residence on the property, subject to the following conditions:

1. A Sanitary Permit for a new waste disposal system must be issued and a copy furnished to the Planning and Zoning Division staff.
2. The footprint of the proposed residence and attached garage shall not exceed 1,280 sq. ft. in size (this is the requested 880 sq. ft. first floor with a 400 sq. ft. attached garage). The attached garage must be least 400 sq. ft. in size. The first floor without the garage must be a minimum of 850 sq. ft. This will result in approximately 5,719 sq. ft. of open space on the property.
3. The proposed residence, including the first and second floors (not including the basement level), attached garage, any covered decks, covered patios and/or covered porches and the attached garage shall not exceed 1,600 sq. ft. This will result in a floor area ratio of approximately 22.9%.

4. The residence and all other appurtenances must be at least 10 ft. from the east and west lot lines, as measured to the outer edges of the walls and any windows/bump outs, fireplaces, etc. that extend further out from the structure than the walls, with overhangs not to exceed two (2) ft. in width. Any sidewalks, stairs, or walkways along the sides of the residence must be located at least three (3) ft. from the side lot lines.
5. The residence and all other appurtenances must be at least 35 ft. from established right-of-way of Jaeckles Blvd., as measured to the outer edges of the walls and any windows/bump outs, fireplaces, etc. that extend further out from the structure than the walls, with overhangs not to exceed two (2) ft. in width.
6. The basement shall not have an exposure.
7. No retaining walls are permitted.
8. Prior to the issuance of a Zoning Permit, a complete set of house plans, in conformance with the above conditions must be submitted to the Planning and Zoning Division staff for review and approval.
9. Prior to the issuance of a Zoning Permit, a Stake-Out Survey showing the location of the proposed residence, attached garage, any decks or patios, as well as any newly proposed sidewalks, stairs, and walkways, in conformance with the above conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.
10. In order to ensure the construction of the new residence does not result in adverse drainage onto adjacent properties, a detailed Grading and Drainage Plan, showing existing and proposed grades, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a Zoning Permit. The intent is that the property be graded according to the approved plan, and also to provide the drainage will remain on the property, and not drain to the neighboring properties or the road. This Grading Plan may be combined with the Plat of Survey required in Condition No. 9.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The conditioned approval of this request will allow a reasonable use of the property that is not unnecessarily burdensome. It has been demonstrated, as required for a variance, that denial of the requested variances from the road setback, floor area ratio and open space requirements would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. The property is very non-conforming to the required size making strict adherence to the district regulations impossible.

The road setback variance is justified as the structure will be conforming to road setback once sewer is available to the property, so the variance is only temporary. However, variances should be granted only to provide the minimum relief necessary for a reasonable use of the property and to accommodate physical limitations on the property; not the personal preferences or needs of the current property owner. It is not necessary to have 2,248 sq. ft. of floor area (3,088 sq. ft. with the basement) in order to have a reasonable use of this very small and non-conforming property. The requested structure size far exceeds what could be considered minimum relief necessary in order to achieve a reasonable use of the property since the proposed floor area ratio is over twice what the district allows. As recommended, a total footprint of 1,280 sq. ft. and a total floor area of 1,600 sq. ft. provides a reasonable use of the property, is not unnecessarily burdensome and will permit the construction of a residence and attached garage that will be appropriately sized for the lot, not detrimental to the surrounding neighborhood or contrary to the public interest. With the basement, this structure will provide a minimum of 2,440 sq. ft. and as much as 2,840 sq. ft. of living and storage space. Therefore, the approval of this request, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance.

BA10:004 THOMAS AND ELIZBETH RACHEL (OWNERS) WILLIAM GROSKOPF (AGENT):

Mr. Day

*I make a motion to **approve** the request, in accordance with the Staff's recommendation, as stated in the Staff Report, with the conditions in the Staff Report, and for the reasons stated in the Staff Report.*

The motion was seconded by Mr. Schuett and carried unanimously.

The Planning and Zoning Division staff's recommendation was for **approval** of the request for variances from the C-1 (EFD) District requirements for lateral expansion into the floodplain and **approval** of the requested variances from the floodplain setback and 50% requirements, subject to the following conditions:

1. Prior to the issuance of a Zoning Permit, the Environmental Health Division must certify that the existing septic system is adequate for the proposed construction, or a Sanitary Permit for a new waste disposal system must be issued and a copy furnished to the Planning and Zoning Division staff.
2. The additions must be constructed in substantial compliance with the submitted preliminary construction plans.
3. The proposed residence and attached garage must conform to the height requirements of the Ordinance.

4. The structure shall not have a High Flood Damage Potential (i.e. damage that could result from flooding that includes any danger to life or health or any significant economic loss to a structure and its contents).
5. The construction shall not impede drainage, obstruct flow, reduce the flood water storage capacity of the floodland or result in an increase regional flood height. A cross-section elevation view of the proposal, perpendicular to the watercourse, showing if the proposed development will obstruct flow; or an analysis calculating the effects of this proposal on regional flood height to ensure that the effects of the proposal are according to the standards set forth in Section 3(d)5 A. These standards state that the submitted plans and calculations must demonstrate that the proposed fill of the floodplain does not impede drainage, obstruct flows, or reduce the floodwater storage capacity of the floodland. This analysis must be performed and certified by a Professional Engineer licensed in the State of Wisconsin.
6. If the flood storage capacity is proposed to be reduced, compensating storage capacity of the floodplain must be provided on this property in a manner that is not deleterious to other properties or the quality of any waters. Compensatory storage is required for all areas of authorized fill on a minimum of a one to one basis, which equals 100% replacement of any lost floodplain storage capacity. Excavation below the groundwater table is not considered to provide an equal volume of storage. The area of compensatory floodplain storage shall be in close proximity to the fill activity and shall not result in an increase in floodplain elevations on upstream or downstream properties. This analysis must be performed and certified by a Professional Engineer licensed in the State of Wisconsin.
7. The elevation of the lowest floor of the residence and attached garage, excluding any basement or crawlspace 5 ft. or less in height, shall be placed at or above the flood protection elevation (estimated 872.0 amsl). Said foundation shall be floodproofed and certified as set forth herein. Basements or crawlspaces that are 5 feet or less in height must comply with Condition No. 12 below.
8. Fill shall be used to elevate the lowest floor, excluding those basements or crawlspaces, 5 ft. or less in height, so as to meet the above. The fill surrounding the structure shall not be less than one (1) foot below the flood protection elevation for the particular area and the fill shall extend at such elevation at least fifteen (15) feet beyond the limits of the structure. The fill shall not negatively alter floodwater conveyance or increase flood heights. Where such distance cannot be achieved because of lot lines, elevations of existing streets or sewer lines, flood impacts, or other similar constraints, said fill elevation shall extend as far as is practicable resulting in no slope conditions at its terminus which may adversely affect surface water drainage on adjacent properties. In addition, where the fifteen (15) feet of fill cannot be achieved as set forth above, the structures shall be floodproofed to the flood protection elevation in accordance with the methods set forth herein and shall be certified as such by an architect or professional engineer registered in the State of Wisconsin and be authorized by the WDNR. Other methods may be used, as long as they are certified as set forth above, which are designed to the flood protection elevation for the particular area in question. All

floodproofing measures shall at a minimum provide anchorage to resist flotation and lateral movement, and shall insure that the structural walls and floors are watertight. In order to insure that adequate measures are taken, the applicant shall submit a plan or document certified, as above, that the floodproofing measures are adequately designed to protect the property to the flood protection elevation for the subject area.

9. If the residence has a basement or crawlspace which is 5 ft. in height or less and which is not useable as living area, the surface of the floor of the basement or crawlspace shall be at or above the regional flood elevation. Heating, ventilation, air conditioning, electrical and gas equipment shall be at or above the flood protection elevation. In any case, the basement or crawlspace shall be floodproofed in accordance with section 8(c) to the flood protection elevation so that floodwater cannot enter directly over the ground surface into such basement or crawlspace.
10. In addition to the lowest floor elevation and fill requirements of this ordinance, any structure must meet the floodproofing standards set forth in Section 8(c) of the Ordinance.
11. There shall be contiguous dry land access provided to the residence and attached garage. Dry land access to be considered a vehicular access route which is above the regional flood elevation and which connects land located in the floodplain to land outside the floodplain, such as a road with its surface above the regional flood elevation and wide enough for wheeled rescue and relief vehicles. In developments where existing street or sewer line elevations make compliance with Section 8(b)A.v. impractical, a permit may be issued where access roads are at or below the regional flood elevation, if the municipality has written assurance from police, fire and emergency services that rescue and relief will be provided to the structure(s) by wheeled vehicles during a regional flood event; or the municipality has a natural disaster plan approved by Wisconsin Emergency Management and the WDNR.
12. All private sewage systems and private wells shall be floodproofed to the flood protection elevation pursuant to Section 8(c) of this ordinance and shall conform with the provisions of the Waukesha County Code of Ordinances and Wisconsin Administrative Codes where applicable to such facilities.
13. No change in the existing topography or drainage courses on any land will be allowed, which will result in adversely altering the drainage or increasing any portion of the existing slope through fill and/or grading to a ratio greater than three (3) horizontal to one (1) vertical. Further, no fill or alterations will be permitted under any circumstances, which will alter the drainage or topography in a way that will adversely affect the surrounding lands.
14. Upon completion, the applicant must submit a certification signed by a registered professional engineer, architect or land surveyor that the fill, lowest floor and flood proofing elevations are in compliance with the permit issued. Flood proofing measures also require certification by a registered professional engineer or architect that flood proofing measures meet the requirements of Section 8(c) of the Ordinance. A copy of that certification must be submitted to the Town of Summit Building Inspector and the Waukesha County Department

of Parks and Land Use - Planning and Zoning Division Staff, prior to proceeding with construction.

15. Upon completion of the foundations of the residence and attached garage, certification shall be obtained from a registered land surveyor that the floor elevations are in conformance with the above conditions.
16. The fill area and the fill around the residence shall be in accordance with the final Grading Plan, to be approved by the Town Engineer and in accordance with the standards of FEMA Technical Bulletin No.10.
17. Upon completion of the project, an “As-Built” Grading Plan, showing the finished grades on the property must be prepared by a registered land surveyor and submitted to the Town Engineer and the Waukesha County Department of Parks and Land Use - Planning and Zoning Division Staff. If that “As-Built” Grading Plan indicates that the property has not been filled in accordance with the approved Grading Plan, the petitioners shall make whatever changes are necessary to bring the property into conformance with the approved Grading Plan. The final plans and fill and floor elevations shall be submitted to FEMA to obtain LOMR-F certification if flood insurance is to be avoided.
18. Prior to the issuance of a Zoning Permit, an updated Plat of Survey showing all proposed structures (including decks, patios, and walkways) in conformance with all conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division Staff for review and approval.
19. Prior to the issuance of a Zoning Permit, the final construction plans for the residence and attached garage, in conformance with all conditions, must be submitted to Planning and Zoning Staff for review and approval.
20. In order to ensure the construction of a new residence does not result in adverse drainage onto adjacent properties, a detailed Grading and Drainage Plan, showing existing and proposed grades, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a Zoning Permit. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake, and not to the neighboring properties or the road. The following information must also be submitted along with the Grading and Drainage Plan: a timetable for completion, the source and type of fill, a complete Vegetative Plan including seeding mixtures and amount of topsoil and mulch, an Erosion and Sediment Control Plan, and the impact of any grading on stormwater and drainage. This Grading Plan may be combined with the Plat of Survey required in Condition No. 20.

21. Floodplain Certificate of Compliance: No land shall be occupied or used, and no building which is hereafter constructed, altered, added to, modified, repaired, rebuilt or replaced shall be occupied until a Floodplain Certificate of Compliance is issued by the Zoning Administrator. The Floodplain Certificate of Compliance shall show that the building or premises or part thereof, and the proposed use, conform to the floodplain provisions of this ordinance. If all provisions are met, the Floodplain Certificate of Compliance shall be issued within 10 ft. days after written notification that the permitted work completed. The Zoning Administrator shall issue the Floodplain Certificate of Compliance to the Town Building Inspector and a copy of the Floodplain Certificate of Compliance to the applicant.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The conditional approval of this request will allow the construction of additions and interior remodeling to the existing residence and construction of an attached garage that provides a reasonable use of the property and is appropriately sized for the particular lot conditions. It will also ensure that floodplain storage compensation will be provided. It is important to note that the purpose and intent of the EFD District is to provide for the continued use of improved properties that lie within the floodplain and which are otherwise considered prohibited structures and to regulate them in accordance with sound floodplain management practices. It is further the intent of these provisions to regulate and diminish the proliferation of non-conforming structures and uses in floodplain areas and to regulate said reconstruction, remodeling, conversion and repair with the overall intent of lessening the public responsibilities attendant to the continued and expanded development of land and structures which are inherently incompatible with natural floodplains and to lessen the potential danger to life, safety, health and welfare of persons whose lands are subject to the hazards of floods. It is also important to note that the reason for the request is that the existing residence and detached garage were severely damaged in the 2008 floods. This area of the residence was under several feet of water in 2008. This proposal will flood proof the structure and ensure that adjacent properties are not negatively affected by the construction. This approval, as conditioned, will result in almost 2,700 sq. ft. of living and storage space (not including the crawl space) that will be flood proofed, and this provides reasonable use of this property. Therefore, the approval of this request, as conditioned, will be in conformance with the purpose and intent of the Ordinance.

BA10:005 DAVE AND CONSTANCE WICK (OWNERS) BRAD LYNCH (AGENT):

Ms. Weber

I make a motion to approve the requested shore setback variance to replace the existing retaining wall within 75 ft. of the shore; approve the requested variances from the floor area ratio, open space, and remodeling a non-conforming structure in excess of 50% of its fair market value requirements, approve the requested special exception from the offset requirements, and deny the requested variance from the road setback requirements of the Waukesha County Shoreland and Floodland Protection Ordinance to allow additions and extensive

remodeling to the existing residence, subject to the conditions stated in the Staff Report, in accordance with the Staff's recommendation, as stated in the Staff Report and for the reasons stated in the Staff Report, with the following additional condition and change to condition No. 9:

Condition No. 9 shall be amended to read: "Prior to the issuance of a Zoning Permit, the Environmental Health Division must certify that the existing septic system is adequate for the proposed construction, or a Sanitary Permit for a new waste disposal system must be issued and a copy furnished to the Planning and Zoning Division staff. The well location must also be approved."

A condition shall be added to read: "The residence and attached garage and all other appurtenances must be at least 44.75 ft. from the right-of-way of Hasslinger Drive, as measured to the outer edges of the walls and any windows/bump outs that extend further out from the structure than the walls, with overhangs not to exceed two (2) ft. in width."

The motion was seconded by Mr. Day and carried unanimously.

The Planning and Zoning Division staff's recommendation was for **approval** of the requested shore setback variance to replace the existing retaining wall within 75 ft. of the shore; **approval** of the requested variances from the floor area ratio, open space, and remodeling a non-conforming structure in excess of 50% of its fair market value requirements, **approval** of the requested special exception from the offset requirements, **denial** of the requested variance from the road setback requirements of the Waukesha County Shoreland and Floodland Protection Ordinance to allow additions and extensive remodeling to the existing residence, subject to the following conditions:

1. Prior to the issuance of a Zoning Permit, the shed and detached deck at the shoreline must be removed from the property. Once this has been completed, Planning and Zoning Division staff shall be contacted to schedule an inspection to verify removal.
2. The proposed residence, including the total square footage of the first and second floors of the residence, attached garage, any covered decks, covered patios and/or covered porches, etc, shall not exceed 19.5% of the lot area. This will result in a floor area of approximately 1,836 sq. ft.
3. The footprint of the residence and attached garage, including any covered porches, covered decks, covered patios etc shall not exceed 1,500 sq. ft. in size. The attached garage must be a minimum of 400 sq. ft. in size as measured from outside wall to outside wall with overhangs not to exceed two feet. This will result in 7,919 sq. ft. of open space on the property.

4. The residence and all other appurtenances must be at least 4.3 ft. from the north lot line (i.e. no closer than the existing residence) and 10 ft. from the south lot line, as measured to the outer edges of the walls and any windows/bump outs, fireplaces, etc. that extend further out from the structure than the walls, with overhangs not to exceed two (2) ft. in width. Any sidewalks, stairs, or walkways along the sides of the residence must be located at least three (3) ft. from the side lot lines. Patios and decks must be a minimum of 10 ft. from the lot lines.
5. The residence and attached garage and all other appurtenances must be at least 44.75 ft. from the right-of-way of Hasslinger Drive, as measured to the outer edges of the walls and any windows/bump outs that extend further out from the structure than the walls, with overhangs not to exceed two (2) ft. in width.
6. The proposed residence must not exceed three stories (including any exposed basement level), as viewed from the lake. The proposed residence must also conform to the height requirements of the Ordinance.
7. No new detached structures are permitted.
8. No new retaining walls are permitted; however, the existing retaining wall located approximately 63 ft. from the shoreline may be replaced in the same location. This work must be included as part of the submitted plans.
9. Prior to the issuance of a Zoning Permit, the Environmental Health Division must certify that the existing septic system is adequate for the proposed construction, or a Sanitary Permit for a new waste disposal system must be issued and a copy furnished to the Planning and Zoning Division staff.
10. Prior to the issuance of a Zoning Permit, a complete set of scaled house plans, in conformance with the above conditions, must be submitted to the Planning and Zoning Division staff for review and approval.
11. Prior to the issuance of a Zoning Permit, a Stake-Out Survey showing the location of the proposed residence, attached garage, any proposed decks or patios, as well as any proposed sidewalks, stairs, walkways and retaining walls in conformance with the above conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.
12. In order to ensure the construction does not result in adverse drainage onto adjacent properties, a detailed Grading and Drainage Plan, showing existing and proposed grades, and the location of all proposed retaining walls, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a Zoning Permit. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the

property or drain to the lake, and not to the neighboring properties or the road. This grading plan may be combined with the plat of survey required in Condition No. 11.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The approval of the requested variances from the floor area ratio and open space requirements is justified because the overall lot size is only a little over half of what the district requires. The 50% variance and offset special exception is justified because it would be unnecessarily burdensome to require the owner to move the entire structure over 5.5 ft. in order to meet the offset requirements. Moving the house over would also require moving the well. The shore setback variance to replace the existing retaining wall is reasonable in order to minimize disturbance to the slope to the lake. The road setback variance is not justified as the house can be easily redesigned and its footprint reduced in order to meet the road setback requirements. The conditioned approval of this request will allow a reasonable use of the property that is not unnecessarily burdensome. It was also result in the removal of two extremely non-conforming structures (the shed and the deck near the shoreline). It has been demonstrated, as required for a variance, that denial of the requested variances from the floor area ratio, open space, and the 50% requirements would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. The property is very non-conforming to the required size and width making strict adherence to the district regulations impossible. However, variances should be granted only to provide the minimum relief necessary for a reasonable use of the property. In addition, variances should only be granted to accommodate physical limitations on the property and not the personal preferences or needs of the current property owner. It is not necessary to approve the requested 24.6% floor area ratio (2,322 sq. ft.) to provide minimum relief from the Ordinance requirements and a reasonable use of the property. While the current allowable floor area ratio on this property is 15% (1,413 sq. ft.), once the property is sewered, a floor area ratio of 19.5% (1,836 sq. ft.) will be permitted. Therefore, the recommended floor area ratio variance is essentially temporary; as the structure will be conforming to this provision once the property is sewered. It will be impossible at any point in the future to adhere to the open space requirements under current zoning regulations. As recommended, a total footprint of 1,500 sq. ft. and a total floor area of 1,836 sq. ft. (not including the basement square footage) provides a reasonable use of the property, is not unnecessarily burdensome and will permit the construction of additions (including an attached garage) and extensive remodeling to the existing residence that will be appropriately sized for the lot, not detrimental to the surrounding neighborhood or contrary to the public interest. It is also consistent with what has been approved on several properties on this street. Therefore, the approval of this request, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance.

BA10:006 CHUCK'S LAKESIDE, INC. AND FIRST BANK FINANCIAL CENTRE (OWNERS) ATTY. T. MICHAEL SCHOBER (AGENT):

Mr. Day *I make a motion to **approve** the request, in accordance with the Staff's recommendation, with the conditions as stated in the Staff Report and for the reasons stated in the Staff Report.*

The motion was seconded by Mr. Schuett and carried unanimously.

The Planning and Zoning Division staff's recommendation and the reasons for the recommendation, as stated in the Staff Report, are as follows:

The staff recommends **approval** of the relocation of the parking stalls to allow them to be zero (0) feet from the adjacent lot line to the northwest as well as from the C.T.H. "B" established road right of way, which is 33 ft. from the centerline of the road. It is felt that a required minimum of 10 ft. from both of those parcel lines will severely restrict the usefulness of the building and the parking spaces necessary to accommodate the existing building and its use as a restaurant and banquet facility. It is also felt that by relocating the parking stalls outside of the right of way and providing clear definition as to an entrance and exit to this facility, a very substantial improvement results which is in the public's interest by virtue of the future clear definition of the entrance and exit to this facility while also removing cars parked in the right of way, which can have undesirable and unsafe effects on the public using C.T.H. "B". This property is on a curve of the highway and the placement of cars and other vehicles within the right of way may restrict the visibility around that curve. Further, we do not feel there is any need to separate the parking from the northwest lot line by 10 ft., as the adjacent use of the property is also a parking lot. The Planning and Zoning Division Staff feel there is no need to have such a separation and if required, would restrict the accessibility around the building and reduce the number of parking stalls requiring additional parking areas being installed to the rear of the building closer to neighboring residents along with their hard surface impacts regarding surface water runoff.

It is also felt that as a condition of this approval that the Board of Adjustment requires the space between the edge of the pavement and the highway right of way be restored with low growing vegetative material to provide for runoff infiltration from the parking lot and to record a deed dedicating the right of way (33ft.) to the County to clearly delineate the county right of way from the private property. We feel that the approval of this variance from the Offset and Setback requirements of the Ordinance, with the recommended condition is in the public's interest for the reasons stated above and will provide a very reasonable use of this property, which has been a long established restaurant facility in the Town of Summit.

OTHER ITEMS REQUIRING BOARD ACTION:

Approve the attendance of Board Adjustment members at the Wisconsin Lakes Convention, to be held at the KI Convention Center in Green Bay, Wisconsin, on March 30st through April 1st, 2010.

Mr. Day I make a motion to approve the attendance of Board Adjustment members at the Wisconsin Lakes Convention, to be held at the KI Convention Center in Green Bay, Wisconsin, on March 30th through April 1st, 2010.

The motion was second by Mr. Schuett and carried unanimously.

ADJOURNMENT:

Mr. Day I make a motion to adjourn this meeting at 9:02 p.m.

The motion was seconded by Mr. Schuett and carried unanimously.

Respectfully submitted,

Tom Day
Secretary, Board of Adjustment